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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL E. COOK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0607-CR-407
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause Nos. 48D01-0507-FC-210, 48D01-0507-FC-229, and 48D01-0508-FC-249

November 30, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Michael E. Cook ("Cook") appeals the aggregate six-year sentence imposed upon him for his convictions of Robbery, a Class C felony,[1] Theft, a Class D felony[2] and Battery, a Class A misdemeanor.[3] We affirm.

Issue

Cook presents four issues for review, which we consolidate and restate as a single issue: whether his six-year sentence is inappropriate.

Facts and Procedural History

On May 29, 2005, Cook entered a CVS Pharmacy located in Pendleton, Indiana. He approached the pharmacy counter with one hand in the pocket of his sweatshirt and shouted at the pharmacist "give me Oxycodone." (Tr. 23.) The pharmacist handed Oxycodone tablets to Cook, who then left the store. On June 7, 2005, Cook stole approximately $45.00 from a desk owned by his landlord, Delaine Wooden of Pendleton. On June 19, 2005, at the Mardi Gras bar in Lapel, Indiana, Cook struck John Kepner in the face, causing bodily injury.

On June 30, 2005, the State charged Cook with Battery Resulting in Serious Bodily Injury, a Class C felony.[4] On August 2, 2005, Cook was charged with Burglary, a Class C felony,[5] and Theft, a Class D felony. On August 31, 2005, he was charged with Robbery, a Class C felony. On May 15, 2006, Cook pleaded guilty to Robbery, Theft, and Battery as a

[1] Ind. Code § 35-42-5-1(2).
[2] Ind. Code § 35-43-4-2(A).
[3] Ind. Code § 35-42-2-1(a)(1)(A).
[4] Ind. Code § 35-42-2-1(A)(3).

Class A misdemeanor. Pursuant to the terms of his plea agreement with the State, Cook's executed sentence was capped at eight years and sentencing was otherwise within the discretion of the trial court.

On June 12, 2006, the trial court sentenced Cook to concurrent terms of six years for Robbery, with three years suspended, two years for Theft, and one year for Battery. Cook now appeals.

Discussion and Decision

The advisory sentence for a Class C felony conviction is four years. Indiana Code § 35-50-2-6. Cook claims that his six-year sentence is inappropriate in light of the nature of his offenses and his character, and should be revised pursuant to Indiana Appellate Rule 7(B). More specifically, Cook argues that the trial court improperly found and balanced the aggravating and mitigating circumstances.

In general, sentencing determinations are within the trial court's discretion. Cotto v. State, 829 N.E.2d 520, 523 (Ind. 2005). "A court may impose any sentence that is authorized by statute and permissible under the Constitution of the State of Indiana, regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d).

Accordingly, a sentencing court is under no obligation to find either aggravating or mitigating circumstances. Rather, the court may impose any sentence within the sentencing range without regard to the presence or absence of such circumstances. "Because the new sentencing statute provides a range with an advisory sentence rather than a fixed or

[5] Ind. Code § 35-43-2-1.

presumptive sentence, a lawful sentence would be one that falls within the sentencing range for the particular offense." Samaniego-Hernandez v. State, 839 N.E.2d 798, 805 (Ind. Ct. App. 2005). The sentence imposed upon Cook was within the sentencing range applicable to a Class C felony.

However, the trial court specifically found aggravators and mitigators in accordance with Indiana Code Section 35-38-1-3, which provides in relevant part:

> The court shall make a record of the [sentencing] hearing, including:
>
> (1) a transcript of the hearing;
> (2) a copy of the presentence report; and
> (3) if the court finds aggravating circumstances or mitigating circumstances, a statement of the court's reasons for selecting the sentence that it imposes.

In imposing a sentence in excess of the advisory term, the trial court found in aggravation "1) there are multiple offenses and multiple victims involved and 2) [Cook] has prior contacts with law enforcement." (App. 15.) The trial court found in mitigation "1) [Cook] has accepted responsibility for his actions by pleading guilty, 2) Cooperation with law enforcement, 3) [Cook] has expressed remorse and shame for his actions, and 4) [Cook] has taken steps to address his drug addiction." (App. 15.)

The trial court's election to make a sentencing statement assists our review by providing a basis for the trial court's sentencing determination; however, we are not constrained to consider only those factors in evaluating the appropriateness of a sentence. See McMahon v. State, No. 79A02-0603-CR-170, slip op. at 10-12 (Ind. Ct. App. Nov. 13, 2006). On appeal, Cook alleges that his history of arrests is an improper sentencing consideration. Also, he urges us to consider his history of employment, and his need to

provide for his family, in addition to the mitigators found by the trial court. Finally, he contends that his crimes were not particularly heinous.

The trial court found that Cook had "prior contacts with law enforcement." The Presentence Report indicates that Cook was charged with battery in 2002 and in 2006; both charges were dismissed. Because the charges were dismissed, they do not constitute a "criminal history." See Tunstill v. State, 568 N.E.2d 539, 544 (Ind. 1991). However, a history of arrests may be considered relative to one's character. See id. at 545. At a minimum, Cook's history of arrests does not militate toward a lesser sentence.

On the other hand, there is evidence suggestive of good character. Cook has been steadily employed and supports his child; he sought substance abuse treatment; he pleaded guilty and he expressed remorse.[6] However, many people are gainfully employed and this does not necessarily entitle a defendant to great mitigating weight in sentencing. See Hammons v. State, 493 N.E.2d 1250, 1255 (Ind. 1986), reh'g denied. Too, our Supreme Court has stated, "[m]any persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship." Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). We also observe that Cook sought substance abuse treatment as a consequence of his arrest rather than upon his own initiative.

Furthermore, it is apparent that Cook received a substantial sentencing benefit from his decision to plead guilty. Cook was originally charged with three separate Class C

felonies and one Class D felony. Accordingly, he faced a possible sentence of twenty-seven years. Pursuant to the terms of his plea agreement with the State, Cook pleaded guilty to one Class C felony (Robbery), one Class D felony (Theft) and Battery as a Class A misdemeanor, and faced a maximum executed sentence of eight years.

With regard to the nature of the offenses, it is significant that there were three offenses involving three separate victims. Cook approached a CVS pharmacist, with his hand in his pocket, fostering the impression that he was armed, and demanded Oxycodone. He entered his landlord's business premises and stole cash. Finally, Cook struck a man in his face, causing injury. As such, the nature and number of the offenses do not suggest a minimum sentence.

Our consideration of the character of the offender and the nature of his offenses is in accordance with the trial court's conclusion that Cook should receive a sentence in excess of the advisory term. Cook has not persuaded us that his six-year sentence, with three years suspended, should be revised for inappropriateness.

Affirmed.

RILEY, J., and MAY, J., concur.

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[6] In general, we defer to the trial court's finding of remorse or a lack of remorse, because the trial court, unlike this Court, "has the ability to directly observe the defendant and listen to the tenor of his or her voice." Corralez v. State, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004).